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15 **Pro Hac Vice* admission to be filed

16 Attorneys for Plaintiff M. Papadopoulos
17 Dental Corporation and the Class

18
19 **UNITED STATES DISTRICT COURT**
20 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**
21

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23 **M. Papadopoulos Dental**
24 **Corporation**, a California corporation,
25 individual and on and on behalf of all
26 others similarly situated,

27 Plaintiff,

28 v.

1 **First Continuing Education**
2 **Administration, LLC d/b/a CE**
3 **Karma**, a Delaware corporation,

4 Defendant.

5 Case No. 2:19-cv-1109

6 **CLASS ACTION COMPLAINT**

7 **JURY TRIAL DEMANDED**

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28 Plaintiff M. Papadopoulos Dental Corporation (“Papadopoulos” or
“Plaintiff”) brings this Class Action Complaint against First Continuing Education
Administration, LLC d/b/a CE Karma (“CE Karma” or “Defendant”) to stop its
practice of sending unsolicited fax advertisements to consumers and to obtain redress
for all persons injured by its conduct. Plaintiff, for its Class Action Complaint,
alleges as follows upon personal knowledge as to itself and its own acts and

1 experiences, and, as to all other matters, upon information and belief, including an
2 investigation conducted by its attorneys.

3 **PARTIES**

4 2. Plaintiff M. Papadopoulos Dental Corporation is a corporation
5 incorporated and existing under the laws of the State of California with its principal
6 place of business located at 1235 W. Sepulveda Blvd., Torrance, California 90502.

7 3. Defendant First Continuing Education Administration, LLC is a limited
8 liability company organized and existing under the laws of the State of Utah with its
9 primary place of business is located at 265 E. 100 S, Suite 200, Salt Lake City, Utah
10 84111.

11 **JURISDICTION**

12 4. This Court has subject matter jurisdiction over this action pursuant to 28
13 U.S.C. § 1331, as the action arises under the Telephone Consumer Protection Act, 47
14 U.S.C. § 227, *et seq.*, a federal statute. On information and belief, the Court also has
15 jurisdiction under the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1332,
16 because the alleged Class consists of over 100 persons, there is minimal diversity,
17 and the claims of the class members when aggregated together exceeds \$5 million.
18 Further, none of the exceptions to CAFA apply.

19 5. This Court has personal jurisdiction over CE Karma and venue is proper
20 in this District because it solicits significant business in this District, and a
21 substantial part of the acts giving rise to the claim occurred in or were directed to
22 individuals within this District.

23 **COMMON ALLEGATIONS OF FACT**

24 6. Defendant CE Karma is a dental continuing education company
25 headquartered in Salt Lake City, Utah.

26 7. The Telephone Consumer Protection Act of 1991, as amended by the
27 Junk Fax Prevention Act of 2005 (“JFPA” or the “Act”), 47 U.S.C. § 227, *et seq.* and
28 the regulations promulgated under the Act, prohibit a person or entity from faxing or

1 having an agent fax advertisements without the recipient's prior express consent,
2 invitation, and permission. The JFPA provides a private right of action that includes
3 statutory damages of \$500 per violation and together with appropriate injunctive
4 relief. Upon information and belief, Defendant has sent facsimile transmissions of
5 unsolicited advertisements to Plaintiff and the Class in violation of the JFPA. (See
6 "CE Karma Faxes," a true and correct copy of which is attached hereto as Exhibit
7 A.)

8. The CE Karma Faxes promote the services and goods of Defendant,
9 namely its for-profit continuing education courses. On information and belief,
10 Defendant has sent, and continues to send, unsolicited advertisements via facsimile
11 transmission in violation of the JFPA to Plaintiff and numerous other consumers.

12. Unsolicited faxes cause concrete and particularized legal harm and
13 damages to their recipients. A junk fax recipient loses the use of its fax machine,
14 paper, and ink toner. An unsolicited fax wastes the recipient's time that would have
15 been spent on something else. A junk fax also invades the recipient's privacy.
16 Unsolicited faxes prevent fax machines from receiving authorized faxes, prevent
17 their use for authorized outgoing faxes, cause undue wear and tear on the recipients'
18 fax machines, and require additional labor to attempt to discern the source and
19 purpose of the unsolicited message.

20. On behalf of itself and all others similarly situated, Plaintiff brings this
21 case as a class action asserting claims against Defendant under the JFPA.

22. Plaintiff is informed and believes, and upon such information and belief
23 avers, that this action is based upon a common nucleus of operative fact because the
24 facsimile transmissions at issue were and are being sent in the same or similar
25 manner. This action is based on the same legal theory, namely liability under the
26 JFPA. This action seeks relief expressly authorized by the JFPA: (i) injunctive and
27 declaratory relief enjoining Defendant, its employees, agents, representatives,
28 contractors, affiliates, and all persons and entities acting in concert with them, from

1 sending unsolicited advertisements in violation of the JFPA; and (ii) an award of
 2 statutory damages in the minimum amount of \$500 for each violation of the JFPA,
 3 and to have such damages trebled, as provided by § 227(b)(3) of the Act.

4 **FACTS SPECIFIC TO PLAINTIFF**

5 12. On August 30, 2017, CE Karma transmitted or otherwise caused to be
 6 sent, by telephone facsimile machine or similar technology, an unsolicited fax
 7 advertisement to Plaintiff. (*See* Ex. A.)

8 13. On September 21, 2017, Defendant again caused an unsolicited fax
 9 advertisement to be transmitted to Plaintiff. (*See* Ex. A.)

10 14. True and accurate copies of both faxes are attached hereto as Exhibit A.

11 15. CE Karma knew about, profited from, and received the benefits of
 12 marketing of its products and is a responsible party under the JFPA.

13 16. Defendant created or made Exhibit A, which Defendant knew or should
 14 have known advertises Defendant's goods or products (namely, its for-profit dental
 15 continuing education courses), and Defendant intended to and did in fact distribute
 16 the faxes Plaintiff and the other members of the Class.

17 17. Exhibit A is part of Defendant's work or operations to market
 18 Defendant's goods or services, which are performed by Defendant and/or on behalf
 19 of Defendant. Therefore, Exhibit A constitutes material furnished in connection with
 20 Defendant's work or operations.

21 18. Plaintiff has never invited nor given permission to Defendant to send
 22 the faxes nor did Plaintiff have any prior relationship with Defendant at the time the
 23 faxes were sent or otherwise.

24 19. On information and belief, Defendant faxed the same, or substantially
 25 similar, unsolicited facsimile to Plaintiff and more than 40 other recipients without
 26 first receiving the recipients' express permission or invitation.

27 20. As a result of Defendant's conduct, Plaintiff suffered concrete
 28 particularized legal harm and damages. That is, Plaintiff lost the use of its fax

1 machine, paper, and ink toner. Further, Defendant's junk faxes invaded the
2 Plaintiff's privacy.

3 21. There is no reasonable means for Plaintiff (or any other class member)
4 to avoid receiving unauthorized faxes. Fax machines, such as the machine utilized by
5 Plaintiff, are left on and ready to receive the urgent communications their owners
6 desire to receive.

7 **CLASS ALLEGATIONS**

8 22. Plaintiff brings this action pursuant to Federal Rule of Civil Procedure
9 23(b)(2) and Rule 23(b)(3) on behalf of itself and the Class as defined as follows:

10 **No Express Permission Class:** All persons who (1) on or after four
11 years prior to the filing of this action through the date on which notice
12 is sent to the Class, (2) were sent, by Defendant or on Defendant's
13 behalf, (3) a telephone facsimile message substantially similar to
14 Exhibit A, (4) from whom Defendant claims it obtained prior express
15 permission or invitation to send those faxes in the same manner as
16 Defendant claims it obtained prior express consent to fax the Plaintiff.

17 23. The following individuals are excluded from the Class: (1) any Judge or
18 Magistrate presiding over this action and members of their families; (2) Defendant,
19 Defendant's subsidiaries, parents, successors, predecessors, and any entity in which
20 Defendant or their parents have a controlling interest and their current or former
21 employees, officers and directors; (3) Plaintiff's attorneys; (4) persons who properly
22 execute and file a timely request for exclusion from the Class; (5) the legal
23 representatives, successors or assigns of any such excluded persons; and (6) persons
24 whose claims against Defendant have been fully and finally adjudicated and/or
25 released. Plaintiff anticipates the need to amend the class definition following
26 appropriate discovery.

27 24. **Numerosity:** The exact number of members within the Class is
28 unknown and not available to Plaintiff at this time, but individual joinder is

1 impracticable. On information and belief, Defendant sent unsolicited fax
2 advertisements to hundreds if not thousands of persons who fall into the Class. The
3 exact number of members of the Class can be identified through Defendant's records
4 and by reference to other objective criteria.

5 **25. Commonality:** Common questions of law and fact apply to the claims
6 of all class members. Common material questions of fact and law include, but are
7 not limited to, the following:

- 8 a. Whether the Defendant sent unsolicited fax advertisements or
9 caused such fax advertisements to be sent to the Plaintiff and the other class
10 members;
- 11 b. Whether the Defendant's faxes advertised the commercial
12 availability of Defendant's good and/or services;
- 13 c. Whether Defendant obtained prior express invitation or
14 permission from the recipients to send the faxes; and
- 15 d. Whether the Defendant sent the faxed advertisements knowingly
16 or willfully such that treble damages are warranted.

17 **26. Typicality:** The Plaintiff's claims are typical of the claims of all class
18 members. The Plaintiff received the CE Karma Faxes sent by or on behalf of the
19 Defendant advertising Defendant's goods, equipment, and/or services during the
20 relevant time period. The Plaintiff is making the same claims and seeking the same
21 relief for itself and all class members based upon the same federal statute. The
22 Defendant has acted the same or in a similar manner with respect to the Plaintiff and
23 all the class members.

24 **27. Adequate Representation:** The Plaintiff and its counsel will fairly and
25 adequately represent and protect the interests of the Class. It is interested in this
26 matter, has no actual conflicts with any of the other class members, and has retained
27 experienced class counsel, who are similarly without conflicts, to represent the
28 Class.

1 **28. Conduct Similar Towards All Class Members:** Class certification is
2 appropriate because the Defendant has acted and refused to act in the same or similar
3 manner with respect to all class members thereby making injunctive and
4 corresponding declaratory relief appropriate. The Plaintiff requests such relief as
5 authorized and appropriate by 47 U.S.C. § 227, *et seq.*

6 **29. Predominance, Superiority, and Manageability:** Common questions
7 of law and fact predominate over any questions affecting only individual members,
8 and a class action is superior to other methods for the fair and efficient adjudication
9 of the controversy because:

- 10 a. Proof of the claims of the Plaintiff will also prove the claims of
11 the Class without the need for separate or individualized proceedings;
- 12 b. Evidence regarding defenses or any exceptions to liability that the
13 Defendant may assert and prove will come from the Defendant's records and
14 will not require individualized or separate inquiries or proceedings;
- 15 c. The Defendant has acted and continues to act pursuant to
16 common policies or practices in the same or similar manner with respect to all
17 class members;
- 18 d. The amount likely to be recovered by individual class members
19 does not support individual litigation. A class action will permit a large
20 number of relatively small claims involving virtually identical facts and legal
21 issues to be resolved efficiently in one proceeding based upon common
22 proofs; and
- 23 e. This case is manageable as a class action in that:
 - 24 i. The Defendant identified persons or entities to receive the
25 fax transmission and it is believed that the Defendant's telephone,
26 computer, and business records will enable the Plaintiff to identify class
27 members and establish liability and damages;

ii. Liability and damages can be established for the Plaintiff and the Class with the same common proofs;

iii. Statutory damages are provided for in the statute and are the same for all class members and can be calculated in the same or a similar manner;

iv. A class action will result in an orderly and expeditious administration of claims and it will foster economics of time, effort and expense;

v. A class action will contribute to uniformity of decisions concerning the Defendant's practices; and

vi. As a practical matter, the claims of the Class are likely to go unaddressed absent class certification.

FIRST CAUSE OF ACTION

Violation of 47 U.S.C. § 227, *et seq.*

(On Behalf of Plaintiff and the No Consent Class)

30. Plaintiff incorporates by reference the foregoing allegations as if fully set forth herein.

31. The JFPA makes unlawful for any person to “use any telephone facsimile machine, computer or other device to send, to a telephone facsimile machine, an unsolicited advertisement . . .” 47 U.S.C. § 227(b)(1)(C).

32. The JFPA defines “unsolicited advertisement” as “any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person’s prior express invitation or permission, in writing or otherwise.” 47 U.S.C. § 227(a)(5).

33. The faxes sent by Defendant advertised its continuing legal education courses that Defendant charges individuals to register for and attend. The faxes were commercial in nature, and constitute advertisements under the JFPA.

1 34. Plaintiff and the other class members never gave prior express consent,
2 invitation, or permission to receive the faxes.

3 35. **The Faxes.** Defendant sent the CE Karma Faxes via facsimile
4 transmission from telephone facsimile machines, computers, or other devices to the
5 telephone facsimile machines of Plaintiff and members of the No Consent Class. The
6 faxes constituted an advertisement under the Act. The faxes were transmitted to
7 persons or entities without their prior express permission or invitation. Defendant
8 violated the JFPA and the regulations promulgated thereunder by sending the faxes
9 via facsimile transmission to Plaintiff and members of the No Consent Class.

10 36. **Defendant's Other Violations of the Act.** Plaintiff is informed and
11 believes, and upon such information and belief avers, that during the period
12 preceding four years of the filing of this Complaint and repeatedly thereafter,
13 Defendant has sent via facsimile transmission from telephone facsimile machines,
14 computers, or other devices to telephone facsimile machines of members of the No
15 Consent Class faxes that constitute advertisements under the JFPA that were
16 transmitted to persons or entities without their prior express permission or invitation.
17 Defendant violated the JFPA and the regulations promulgated thereunder. Plaintiff is
18 informed and believes, and upon such information and belief avers, that Defendant
19 continues to send unsolicited advertisements via facsimile transmission in violation
20 of the JFPA and the regulations promulgated thereunder, and absent intervention by
21 this Court, will do so in the future.

22 37. The TCPA/JFPA provides a private right of action to bring this action
23 on behalf of Plaintiff and the No Consent Class to redress Defendant's violations of
24 the Act and provides for statutory damages. 47 U.S.C. § 227(b)(3), *et seq.* The Act
25 also provides that injunctive relief is appropriate. *Id.*

26 38. Defendant is liable to the Plaintiff and the other members of the No
27 Consent Class even if it did not intend to send the faxes or to send them without first
28 obtaining prior express invitation or permission.

1 39. Defendant knew or should have known that: (1) the Plaintiff and the
2 other members of the No Consent Class had not given express invitation or
3 permission for the Defendant or anybody else to fax advertisements about the
4 Defendant's goods or services; and (2) the faxes constituted an advertisement.
5 Defendant acted in conscious disregard of such facts.

6 40. The Defendant's actions caused damage to the Plaintiff and the other
7 class members. Receiving the Defendant's junk faxes caused the recipients to lose
8 paper and toner consumed in the printing of the Defendant's faxes. Moreover, the
9 Defendant's faxes used the Plaintiff's fax machine. The Defendant's faxes cost the
10 Plaintiff time, as the Plaintiff and its employees wasted their time receiving,
11 reviewing, and routing the Defendant's unauthorized faxes. That time otherwise
12 would have been spent on the Plaintiff's business activities. The Defendant's faxes
13 unlawfully invaded the Plaintiff's and other No Consent Class Members' privacy
14 interests in being left alone. Finally, the injury and property damage sustained by
15 Plaintiff and the other members of the No Consent Class from the sending of
16 Defendant's advertisements occurred outside of Defendant's premises.

17 41. As a result of Defendant's conduct, Plaintiff and the other members of
18 the No Consent Class are each entitled to, pursuant to § 227(b)(3)(B) of the Act, a
19 minimum of \$500.00 in damages for each violation of such Act.

20 42. Furthermore, in the event the Court finds that Defendant's conduct was
21 willful and knowing, the Court should, pursuant to § 227(b)(3)(C) of the Act, treble
22 the amount of statutory damages recoverable by Plaintiff and the other members of
23 the No Consent Class.

PRAYER FOR RELIEF

25 **WHEREFORE**, Plaintiff, on behalf of itself and the Class, prays for the
26 following relief:

1 A. An order certifying this case as a class action on behalf of the
2 Class as defined above, appointing Plaintiff as the representative of the Class,
3 and appointing its attorneys as Class Counsel;

4 B. An award of actual monetary loss from such violations or the sum
5 of five hundred dollars (\$500.00) for each violation, whichever is greater all to
6 be paid into a common fund for the benefit of the Plaintiff and the class
7 members;

8 C. An order declaring that Defendant's conduct was willful and
9 knowing, and thus an award of actual monetary loss from Defendant's
10 violations or the sum of one thousand five hundred dollars (\$1,500.00) for
11 each violation, whichever is greater all to be paid into a common fund for the
12 benefit of Plaintiff and the class members;

13 D. An order declaring that Defendant's faxes constitute unsolicited
14 advertisements, that Defendant sent the faxes without first obtaining prior
15 express invitation, permission, or consent of the recipients, and enjoining
16 Defendant from further violations, and otherwise protecting the interests of the
17 Class;

18 E. An award of pre-judgment interest;

19 F. An award of reasonable attorneys' fees and costs to be paid out of
20 the common fund prayed for above; and

21 G. Such further and other relief the Court deems reasonable and just.

JURY DEMAND

Plaintiff requests a trial by jury of all claims that can be so tried.

Respectfully submitted,

Dated: February 13, 2019

M. Papadopoulos Dental Corporation,
individually and on behalf of all others
similarly situated,

By: s/ Michael Aschenbrener
One of Plaintiff's Attorneys

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**Pro Hac Vice* admission to be sought

Counsel for Plaintiff and the Putative Class